



UNITED STATES PATENT AND TRADEMARK OFFICE

Commissioner for Patents
United States Patent and Trademark Office
P.O. Box 1450
Alexandria, VA 22313-1450
www.uspto.gov

BAINWOOD HUANG & ASSOCIATES LLC
2 CONNECTOR ROAD
WESTBOROUGH, MA 01581

MAILED

AUG 04 2010

In re Application of
Peter Van Horne, et al.
Application No. 09/848,534
Filed: May 2, 2001
Attorney Docket No. 1004-257

: **OFFICE OF PETITIONS**
: DECISION DISMISSING PETITION
: UNDER 37 CFR 1.78(a)(3)
:

This is a decision on the petition under 37 CFR 1.78(a)(3), filed May 28, 2010, to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of priority to prior-filed nonprovisional applications set forth in the Supplemental Application Data Sheet filed with the petition.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000 and after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Director may require additional information where there is a question whether the delay was unintentional.

The petition does not comply with item (1).

37 CFR 1.78(a)(2)(i) requires that any non-provisional application claiming the benefit of one or more prior-filed copending non-provisional applications must contain or be amended to contain a reference to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) and indicating the relationship of the applications. The relationship between the applications is whether the subject application is a continuation,

divisional, or continuation-in-part of a prior-filed non-provisional application. Also, the status of each non-provisional parent application (if it is patented or abandoned) should also be indicated, following the filing date of the parent non-provisional application. See MPEP Section 201.11, Reference to Prior Non-provisional Applications. The amendment fails to comply with the provisions of 37 CFR 1.78(a)(2)(i) and is therefore unacceptable.

The amendment presented in the supplemental Application Data Sheet is unacceptable as presented because the supplemental Application Data Sheet is unsigned, nor does it state the status of each non-provisional parent application nor does it indicate the status of each non-provisional application. Additionally, the supplemental Application Data Sheet is unacceptable because it does not contain all of the seven section headings listed in 37 CFR 1.76(b). See MPEP 601.05.

As authorized, the \$1,410 surcharge fee, as well as the \$100 certificate of correction fee, will be charged to petitioner's credit card.

Before the petition can be granted, petitioner must submit a substitute amendment in compliance with the aforementioned rules, along with a renewed petition under 37 CFR 1.78(a)(3).¹

Further correspondence with respect to this matter should be addressed as follows:

By mail: Mail Stop PETITIONS
Commissioner for Patents
Post Office Box 1450
Alexandria, VA 22313-1450

By hand: Customer Service Window
Mail Stop Petitions
Randolph Building
401 Dulany Street
Alexandria, VA 22314

By fax: (571) 273-8300
ATTN: Office of Petitions

Any questions concerning this matter may be directed to April M. Wise at (571) 272-1642. All other inquiries concerning the examination or status of this application should be directed to the Technology Center.

/dab/
David Bucci
Petitions Examiner
Office of Petitions

¹ The claim for priority may also be made in an Application Data Sheet in compliance with 37 CFR 1.121 and 37 CFR 1.76(b)(5).